

U.S. Supreme Court Decision Creates Dual Voter Registration System

On June 27, 2013, the United States Supreme Court handed down its decision in a closely-watched lawsuit challenging Arizona's citizenship requirement. Kansas' requirement that individuals provide evidence of citizenship when registering to vote for the first time is similar to the Arizona law but different in several important ways. The differences mean that Kansas' actions in complying with the Court's ruling will vary from those of Arizona and other states that require proof of citizenship.

The decision in *Arizona v. Inter Tribal Council* did not strike down Arizona's state law requiring proof of citizenship, but it drew a distinction between state voter registration application forms



United States Supreme Court
Photo courtesy of Mark Fischer/Creative Commons License

and the universal federal form prescribed by the Election Assistance Commission. It emphasized that states must "accept and use" the federal application in compliance with the National Voter Registration Act of 1993.

K.S.A. 25-2309(a) was amended in 1996 to bring state law into compliance with the NVRA by stating that a person may register to vote in Kansas using either the state application form or the

federal application form, which is referred to in state and federal law as the "mail voter registration application." Throughout the twenty years since NVRA became law, people have been able to be fully registered to vote, and to receive full ballots with all offices and questions on them, by completing either the state or the federal form. With the decision in the Arizona case, there is now a dual registration system and an important distinction between registrants who complete the state application and those who complete the federal application.

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From the desk of the Secretary

On August 21, the Kansas and Arizona secretaries of state filed a complaint against the United States Election Assistance Commission (EAC). This is the first time two states have brought such a court case against the federal commission.

The EAC maintains the national mail voter registration form (the federal form), including information necessary to enable the appropriate state election official to assess the eligibility of the applicant. The lawsuit seeks to force the EAC to include in the federal form our concrete evidence requirements to prove, not merely affirm, U.S. citizenship when registering to vote.

Kansas first requested an update to its federal form instructions in August 2012, pursuant to the state's statutory requirement to submit evidence of U.S. citizenship when registering to vote. The EAC took no action on the matter, Kansas renewed its request in June 2013, and again the EAC deferred such request.

Contrary to a commonly held misconception, the Supreme Court in *Arizona v. Inter Tribal Council of Arizona, Inc.* did not hold that a state may not require evidence of U.S. citizenship when registering to vote. Rather, the majority held that federal law precludes Arizona from requiring a federal form applicant to submit information beyond that required by the form itself. The Supreme Court has spoken with respect to use of the federal form only, and with respect to federal elections only. Congress possesses no authority to regulate state elections.

The majority opinion in the case specifically suggested this lawsuit, saying that a state may establish in a reviewing court that a mere oath will not suffice to effectuate its citizenship requirement and that the EAC is therefore under a nondiscretionary duty to include a concrete evidence requirement on the federal form.

During the period that the lawsuit is pending, and until the EAC changes the Kansas-specific instructions to the federal form, the miniscule number of voters who use the federal form and fail to provide proof of citizenship will be permitted to vote in federal elections only. Those who use the federal form will be able to vote in federal, state and local elections if they submit a citizenship document before election day.

I look forward to working closely with all of Kansas's 105 county election officials as this lawsuit proceeds.

A handwritten signature in black ink that reads "Kris W. Kobach". The signature is written in a cursive, flowing style.

Knutzen Joins SOS Legal Team

Thomas Knutzen, an attorney in Jefferson County, joined the SOS office on July 8, 2013 in the legal department. On September 3, 2013, Knutzen was named Deputy Assistant Secretary of State - Legal Affairs by Secretary of State Kris Kobach. Knutzen is a partner in a private law practice and has served as an Assistant County Attorney in Jefferson County and Assistant District Attorney in Shawnee County. He lives on a farm in rural Jefferson County with his wife Amy and their three children, Michael (4), Ailee (2), and Carolyn (8 months).

Knutzen succeeds two attorneys who had done legal work for the Elections Division in the years since Secretary Kobach took office in January 2011. Ryan Kriegshauser came to the office with Kobach and served as Deputy Assistant Secretary of State-Legal Counsel from January 2011 through December

2012. Kriegshauser left for a position in the Kansas Securities Commissioner's office.

After Kriegshauser's departure, B.J. Harden performed most of the elections-related legal work. Harden had been a law clerk in the SOS office under Ryan Kriegshauser while he completed law school at Washburn University. In June 2013 Harden left the SOS office to become the Assistant Chief of Staff in the office of the Speaker of the Kansas House of Representatives.

Tom Knutzen brings to the SOS office experience as a prosecutor and an attorney in private practice. One of his first big tasks will be to litigate lawsuits involving photo ID and the citizenship requirement in the 2011 SAFE Act. ■



Secretary Kobach swore in new legal counsel Tom Knutzen as Deputy Assistant Secretary of State, Legal Affairs in his office on September 3. Photo by Todd Caywood

GAO Studies Kansas Photo ID Law

The United States Government Accountability Office (GAO) selected Kansas and Tennessee to study the implementation and effect of photo ID voting laws, with the possibility of adding other states to the list. GAO received a request from a congressional committee to study photo ID laws in several states, so the agency's activities have the force of a congressional inquiry behind them.

GAO initiated a conference call on Thursday, July 11, 2013 with Secretary of State Kris Kobach, State Election Director Brad Bryant, and Public Affairs Director Kay Curtis. The two-hour call allowed GAO personnel to obtain background information on Kansas electoral procedures, the photo ID law and SAFE Act in general, procedures used in planning and implementing the photo ID law, and the effects of the law on voting. A final decision was then made that Kansas would be part of the study, and followup questions were sent via email for SOS staff to answer.

The information requested was organized into four categories with specific information requests contained in each category:

Voter Identification

- Information on which of the four Native American tribes issue photo IDs and any available information about how many voters used tribal IDs;
- Free ID cards issued by the Division of Motor Vehicles for voting and demographic information on the applicants;
- State voter IDs issued by the secretary of state's office;
- Guidance provided by the secretary of state to county election officers; and
- Training provided to poll workers.

Provisional Ballots

- The number of voters who voted provisional ballots due to lack of photo ID, and the outcome of those ballots.

Vote History Data

- Data on provisional ballots cast, the reasons they were provisional, and the disposition of the ballots for 2008, 2010 and 2012; and
- Data fields contained in the Kansas state voter registration database.

Voter Fraud

- Spreadsheet of known instances of election crimes;
- A list of Kansas statutes encompassing election fraud; and
- Information provided to local officials for prosecution of election crimes.

Also, GAO requested information about any laws passed from 2008 to 2012 that could have a positive or negative impact on voter turnout. Examples in Kansas include: mobile polling at nursing homes, county option for satellite advance voting, Military and Overseas Voter Empowerment (MOVE) Act amendments to the federal UOCAVA law, redistricting in 2012, and the citizenship requirement of SAFE.

The secretary of state's office responded to the GAO's requests in late August and early September. As of this writing, it is not known how the results will be used or if there will be more followup questions. It is expected that the results of the multi-state study will be published in a report to Congress. ■

Jury List Law Will Affect Voter Registration

During the 2013 legislative session, HB 2164, concerning juries, was passed and signed into law by Governor Sam Brownback. This bill, as it relates to elections, requires jury commissioners to submit to the secretary of state any information concerning prospective jurors who are not qualified because the prospective juror is not a United States citizen. The information is limited to full name, address, age, telephone number and date of birth. The secretary of state's office will

work with each county when this information is received from jury commissioners. Because non-US citizens are not qualified to vote, CEOs will be instructed to search voter registration records and to cancel the registrations of any persons who are deemed unqualified for lack of citizenship. Look for more information on this new program later this fall. ■

New Concealed Carry Law Affects Polling Places

In its 2013 legislative session, the Kansas Legislature passed Senate Substitute for House Bill 2052, also known as the Personal and Family Protection Act (2013 Session Laws, Chapter 105). The essence of the bill is that persons with concealed carry handgun permits may carry handguns into public buildings except under certain defined circumstances.

The law applies to municipal buildings, including any building owned or leased by a public entity. If county election officers have polling places in city or county buildings or other publicly owned buildings, they will most likely come under the law. The law exempts unified school districts. Also, if the county pays rent to use a facility for election day, that facility will be subject to the law.

Any facility that is covered by the law must be equipped with adequate security measures to prevent the carrying of weapons into the building, or it must allow concealed weapons to be carried into the building, which means removing or covering any signage that prohibits the carrying of concealed weapons.

“Adequate security measures” means electronic metal detection equipment and personnel with electronic metal detection wands.

County election officers must consider some questions:

- Which voting situations are covered by the law? Does it include advance voting sites?
- Is a facility subject to the law if money is paid for rent?
- Is a facility subject to the law if it is used by verbal or written agreement but no money is paid?
- If only one room in a building is used for voting, is the entire building subject to the law?

Many public entities are trying to figure out exactly what the law means. The Kansas Attorney General’s office has received multiple requests for official opinions. The secretary of state’s office is engaged in discussions with the attorney general’s office to determine if the questions pertaining to voting will be answered by the existing opinion requests or if another request for an opinion needs to be made. ■

Will Concealed Carry Be Allowed At Polling Places?



The Personal and Family Protection Act allows a person with a concealed carry permit to carry a handgun into public buildings. Illustration by Todd Caywood

SOS Staff to Attend KAC Conference

The Kansas Association of Counties will host its 38th annual fall conference from October 29 through 31, 2013, at the Wichita Hyatt Regency Hotel. The theme of the conference is “On Point. Focused and Strategic....Counties Move Forward.”

Affiliate groups will conduct their breakout sessions on Wednesday, October 30. The county clerks’ session is scheduled for 1:00 to 4:00 p.m. that day. Members of the secretary of state’s office plan to be in attendance to provide updates on litigation involving the requirement to provide proof of citizenship when registering to vote, the dual registration system resulting from use of the federal and state voter registration forms, legislation for 2014, and plans for the 2014 election cycle.

The KAC conference is a great way to stay up to date on current issues and to maintain contacts with colleagues across the state. We encourage county election officers to attend. ■

U.S. Supreme Court Decision

Cont'd

Federal voting laws such as the NVRA technically apply only to federal elections, so the effect of the Court's decision is that individuals who apply for voter registration using the federal form and do not provide proof of citizenship are registered only for federal elections. Those who apply using the state form and do not provide proof of citizenship are not eligible to vote in any elections in Kansas. Those who do provide proof of citizenship, whether they applied using the federal or the state form, are fully registered and eligible to vote in all elections - federal, state, local and questions submitted.

The Supreme Court's decision outlined a path for states to follow in order to have the federal form reflect the state requirements for voter registration. States must formally request the Election Assistance Commission (EAC) to revise the state-specific voter instructions included with the application form to notify applicants that they must provide proof of citizenship. If the EAC denies the request, the court's decision said the next step is to file a lawsuit against the EAC. The commission considers it a policy decision, not a mere ministerial act, to revise the state instructions on the federal form in this way. It takes a majority of the four EAC commissioners to adopt a policy decision, and there are no commissioners at the EAC. All of the commissioners have left the EAC in the past few years, and no replacements have been through the process of being appointed by the President and confirmed by the U.S. Senate. Therefore, the EAC has denied the request by deferring action until there is a quorum.

In 2012 Kansas had already begun the path laid out by the court. Secretary of State Kobach requested in a letter dated August 9, 2012, that the EAC revise the voter instructions to include a notice to applicants that they must provide proof of citizenship to be fully registered to vote in Kansas. The EAC denied the request in a letter dated October 11, 2012, citing the lack of commissioners and the resulting inability to adopt the policy. After the court's decision in the Arizona case, Secretary Kobach renewed his request in a letter to the EAC dated June 18, 2013. The EAC again denied the request in a letter dated August 2, 2013, once again citing the lack of commissioners. On August 21, 2013, Secretary Kobach jointly filed a lawsuit with the Arizona Secretary of State against the EAC, calling on the commission to revise the federal form.

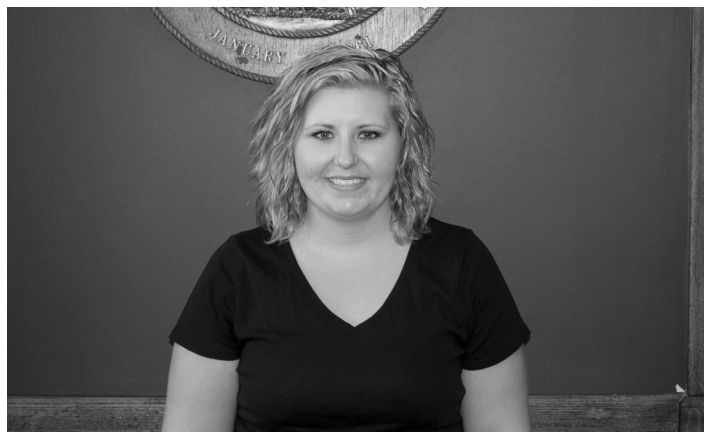
While the case is being litigated, Kansas and other similarly situated states are administering a dual registration system. The Kansas SOS office has issued a directive to county election officers to keep track of which applicants use the federal form.

These federal-only registrants will be allowed to vote only for federal offices in the primary and general elections in 2014 (unless they submit a citizenship document before election day). In 2014 the only federal offices on the ballot are U.S. Senate and U.S. House of Representatives. Federal-only voters are not affected by special question-submitted elections held between now and the 2014 elections.

Secretary Kobach and staff members convened the SAFE CEO Task Force to seek guidance on these issues on August 29, 2013. Specifically, the task force was asked to help design the system for administering the dual registration system - designing poll books and ballots, programming changes in the ELVIS voter registration database and electronic poll books, and poll worker training. ■

New Intern in SOS Elections Division

The Elections Division is pleased to announce the appointment of Samantha Poetter (pronounced Potter) as an intern this fall. Samantha is a political science major at Kansas State. She succeeds Daniel Lyon, who returned to school to concentrate on his studies and to serve as a Resident Assistant. Interns in the Elections Division have frequent contacts with county election offices via email and phone. Now everyone knows who they'll be talking to. Welcome Samantha! ■



New Elections Division intern Samantha Poetter.
Photo by Todd Caywood

Minihan Accepts Award

On August 22, Secretary of State Kris Kobach presented a NASS Medallion award to Jim Minihan for his two decades of service to the Office of the Secretary of State.

“Jim Minihan has been instrumental in the most significant accomplishments of the Office of the Kansas Secretary of State over the last twenty years,” said Kobach.

Among those accomplishments are:

- building the foundation for the Public Key Infrastructure (PKI tokens) for the state that adds heightened security for statewide voter registration and electronic notary services;
- developing and implementing the Kansas statewide voter registration database (ELVIS); and
- developing and implementing the voting equipment procurement contract that brought Kansas into compliance with the Help America Vote Act of 2002.

The award recognizes outstanding service and dedication to furthering the mission of the National Association of Secretaries of State (NASS), including promotion of elections, civic education, service to state government, and commitment to giving. ■



Jim Minihan receives a National Association of Secretaries of State Medallion Award from Secretary Kobach on August 22.
Photo by Todd Caywood

Sex Offender Registry Not a Voter Disqualification

Under Kansas law, a person convicted of a federal or state felony is disqualified from voting until the full term of the sentence has been served and the person's rights are restored. When notified that a person has been convicted, the county election officer cancels the person's voter registration, and the person must re-register when the sentence is complete. There cannot be any parole, probation or other postrelease terms remaining in the person's sentence. Not being eligible to register or vote also means in most cases that the person is ineligible to run for office. Relevant statutes are KSA 21-4615 and KSA 22-3722.

A question has arisen concerning the voting rights of persons who are required to register as offenders - sex, violent or drug offenders - under the Kansas Offender Registration Act. Research conducted by the secretary of state's legal staff indicates that the requirement to register as an offender does not disqualify a person from registering or voting. While Kansas courts have recognized that offender registration has punitive elements, the courts have generally not considered a mandated period of registration to be part of an offender's sentence. Some offenders are required to register for specific periods of time; some are required to register for life.

KSA 22-3722 states in part: “When an inmate has reached the end of the postrelease supervision period, the board shall issue a certificate of discharge to the release. Such discharge, and the discharge of an inmate who has served the inmate's term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment, and the certification of discharge shall so state.”

Thus, convicted felons who are subject to offender registration, but who have otherwise completed their sentences under KSA 22-3722, are eligible to register and vote. ■

Longtime Labette County Clerk Retires

On July 1, 2013, Linda Schreppel retired as Labette County Clerk. Linda had served as county clerk since January 14, 1985. (That is over 28 years!) During her time as county clerk, six different people served as secretary of state. Linda was instrumental in implementing changes brought about by the National Voter Registration Act (NVRA), the Help America Vote Act (HAVA), and dozens of other changes in state and federal law. In addition, Linda witnessed the transformation of a paper-based system to the electronic world we now live in.

Peggy Minor was selected as Linda's replacement. Peggy has served in the county clerk's office since August 4, 1986, including serving as deputy clerk since June 1999. Peggy has lived in southeast Kansas her entire life, most of the time in Labette County. She and her husband have three grown children and seven grandchildren.

Congratulations on a job well done Linda, and welcome aboard Peggy! ■

Kingman County Clerk Retires

This summer, Inge Luntsford retired as Kingman County Clerk. Inge had been county clerk since December of 1996 after taking over for Donna Brown. Inge recently moved to Mayetta, Kansas. She is planning on selling real estate and taking care of her grandchildren.

Carol Noblit was selected as the new county clerk to replace Inge. Carol has been the deputy county clerk since January of 1997. Carol is married and has two children, MaryJo, 19 and Hunter, 18.

Congratulations Carol and Inge! ■

HAVA Endowment

The deadline for placing requests for the 2013/2014 HAVA endowment program arrived August 1st with 45 counties placing requests. The Elections Division of the secretary of state's office compiled and evaluated the orders in order to make a recommendation to Secretary Kobach. The evaluation criteria include: the amount requested in comparison to the size of each county's population, the overall funding available, the nature of the request as a proportion of the whole, and past endowment history.

The largest two categories requested in the HAVA endowment this year were voting equipment and electronic poll books. Endowment requests may be approved or denied in full or in part. Elections Division staff have completed the analysis of the endowment requests and met with Secretary Kobach.

Each county has been notified of the final decision and orders will be forwarded to the appropriate vendors to begin fulfillment. Each county will be billed directly by the vendor its portion of the cost with the vendor billing the secretary of state directly for the remainder of the bill. The SOS office will not pay a vendor until the county has received the product, the product is in good working order, and the county has formally accepted the products or services that have been delivered. ■